IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 15, 2008 Session

RICHARD LAFEVER ET AL. v. LLOYD B. LAFEVER ET AL.

Appeal from the Chancery Court for Putnam County
No. 2007-58 John A. Turnbull, Special Judge

No. M2008-00651-COA-R3-CV - Filed January 23, 2009

In this boundary dispute, the trial court found in favor of the plaintiffs. Although we have concluded that the trial court erred in applying a presumption based upon the payment of taxes, the evidence does not preponderate against the trial court's determination of the proper boundary line. We therefore affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and RICHARD H. DINKINS, JJ., joined.

Henry D. Fincher and Craig P. Fickling, Cookeville, Tennessee, for the appellants, Lloyd Lafever and Mary Ellen Lafever.

Jerry A. Jared, Cookeville, Tennessee, for the appellees, Richard Lafever, Rita Lafever, Robert Lafever, and Joanne Lafever.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Richard and Rita Lafever and Robert and Joanne Lafever (collectively "Plaintiffs") filed a complaint to establish a boundary line against Lloyd and Mary Ellen Lafever (collectively "Defendants") on February 23, 2007.[1] Defendants answered and filed a counterclaim for a determination of the boundary line and to quiet title in their favor or, in the alternative, for a judgment under the doctrine of adverse possession.

The two families own adjoining pieces of property in a rural part of Putnam County. Plaintiffs' property generally lies to the east of Defendants' property. The disputed piece of property consists of 4.6 acres of timbered land on the western side of Plaintiffs' property and the eastern side

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[1] Richard Lafever and Lloyd Lafever are cousins.

of Defendants' property. Defendants contend that the boundary line between the two properties is Alum Creek, a stream located in a hollow behind a wooded hill on the western edge of their property. Plaintiffs contend that the property line is an old fence line on the top of the hill to the east of Alum Creek. The trial court ruled in favor of Plaintiffs, finding that the boundary line was Alum Creek.

Richard Lafever property

Plaintiffs purchased their property in 2005 from Julia Boyd; Ms. Boyd and her late husband had owned the property since 1962. The Boyds purchased the property from the heirs of T.M. "Matt" Hickey and his wife, Mary Etta Hickey; Matt Hickey received the property from his father, T.G. Hickey. Prior to selling the property, Ms. Boyd hired surveyor Alfred Bartlett to survey the land. Mr. Bartlett identified Alum Creek as the boundary line between the two properties at issue here. All of the prior deeds on Plaintiffs' property were boundary deeds–deeds describing the parameters of the property by identifying the adjoining property owners rather than using landmarks.

Lloyd Lafever property

Defendants purchased their property in 1963 from Clarence and Nell Burton. They hired surveyor James Helton to survey the disputed piece of land after this litigation was in progress. Mr. Helton concluded that the boundary line between the two properties at issue here was an old fence line to the east of Alum Creek. All of the deeds on Defendants' property were boundary deeds.

Adjoining properties

The property to the north of Plaintiffs' property was owned by Allen Gentry at the time of trial. Previous owners were Terry Farley and Jerry V. Allison.

To the south of Plaintiffs' property and Defendants' property is a large parcel owned by Robert Goff. The previous owner was Herbert Nash, who received the property in 1958 from Margaret Nash. Lydia Williams was also a previous owner. The Nash deed includes a description of the property's northern boundary, which is the southern boundary of Plaintiffs' property.

TESTIMONY OF WITNESSES

Alfred Bartlett, surveyor, was called as a witness by Plaintiffs. Mr. Bartlett surveyed Plaintiffs' property in February 2003 at the request of Ms. Boyd. Mr. Bartlett obtained all of the deeds from the adjoining property. He had previously surveyed the property to the north. Mr. Bartlett and his assistant talked with Ms. Boyd and with Mr. Stamps, a man who had worked for Mr. Boyd.

Mr. Bartlett testified about how he used the 1958 deed from Margaret Nash to Herbert Nash[2] regarding the property to the south of Plaintiffs' property to determine the southern boundary of Plaintiffs' property:

A. It sits, "Northwardly to Matt Hickey branch."

Q. Would you point that out on the exhibit, where that is?

A. Right here.[3]

Q. Okay. And where is the Matt Hickey branch?

A. Right here.

Q. And who is Matt Hickey?

A. Matt Hickey was a predecessor entitled to this piece of property that we surveyed [Plaintiffs' property].

Q. And everybody agrees that north of this southern line here, this area generally in here, is the Matt Hickey farm, the old Matt Hickey farm [now Plaintiffs' property]; is that correct?

A. Yes.

Q. Now, read further there where it says, "Northwardly to the Matt Hickey branch," and then what?

A. . . . "Formerly T.G. Hickey's spring branch, thence down the said branch to the Alum Lick branch."

. . . .

Q. And then it says, "Down the branch to the falls;" is that correct?

A. Yes.

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[2]The pertinent language of the Nash deed states: "thence Northwardly to Matt Hickey branch, formerly T.G. Hickey's spring branch, thence down the said branch to the alum lick Branch, thence down said branch to the falls."

[3]Our review in this case is hampered by references to locations on surveys to which a witness points without a description in the record sufficient for a reviewing court to identify the exact location under discussion.

Mr. Bartlett put the southwestern corner of Plaintiffs' property at the falls. He then followed Alum Creek northward.

As to the northwest corner of Plaintiffs' property, Mr. Bartlett testified that he took that corner from a deed from Johnny V. Allison to Jerry Allison regarding the piece of property to the north of Plaintiffs' property.[4] Mr. Bartlett testified that, in describing the southeastern corner of the Allison property, the Allison deed "called for a white oak in the fence corner, and called for North 82, 30 West, 1,160 feet with the lands of Boyd to an iron pin 14 inches on the creek bank." Mr. Bartlett "found that iron pin [near Alum Creek] and also found the white oak at the time we did the survey."

During his testimony, Mr. Bartlett pointed out various places on his survey as well as on an aerial photograph of Plaintiffs' property from the tax assessor's office . He noted that the northward jog referenced above was shown at the wrong location on the tax map. Moreover, the tax map had since been changed to indicate that Plaintiffs did not own property to the west of Alum Creek. Rather, Defendants owned the property on the western side of Alum Creek.

Mr. Bartlett testified that the disputed area of Plaintiffs' property, between Alum Creek and an old fence line, was steep and rocky. In addition, there appeared to be better timber on the disputed area as compared to Defendants' property located on the western side of Alum Creek.

On cross-examination, Mr. Bartlett testified that he had also reviewed Defendants' deed when he conducted his survey, but that deed was "very vague." When questioned about the southern boundary of Plaintiffs' property, Mr. Bartlett stated that he took the line all the way to the falls based upon his discussions with Ms. Boyd and Mr. Stamps, who worked on the property. He also looked at the Nash deed's south call to the falls. Defendants' deed did not contradict Mr. Bartlett's placement of the southwest corner at the falls. Mr. Bartlett stated that one of his employees, Mr. Maples, did the field survey on Defendants' property and that he supervised Mr. Maples's work. Mr. Bartlett had been on the property a number of times and was satisfied that Mr. Maples's field survey was correct. He had seen the northwest pin near Alum Creek himself.

James Helton, surveyor, testified for Defendants. He completed his drawing of the disputed area in January 2008. Prior to conducting his survey, Mr. Helton obtained all of the deeds for the surrounding property. He noted that Defendants owned two adjoining tracts: Tract 1, the tract involved in this case, and Tract 2, located north of the tract at issue here. As to Tract 1, Defendants' deed includes the following call: "thence East with Pressley line to a Sycamore, corner of H.J. Thomas and Pressley Corner."

Mr. Helton testified that, based upon what he believed to be the sycamore tree mentioned with respect to Tract 2, he had started his survey at what he believed to be an original corner of Tract 1:

[4]The Allison deed was not admitted into evidence.

A. . . . So we started there [at the purported "corner" of Tract 2], and there's an existing fence the entire portion. This area of the survey [north of Tract 2] is not an area in question, but we feel it belongs to Lloyd's property. The hatching you see here is what we feel that has been included in Mr. Maples' survey, that based on possession line and of course Mr. Lafever's input, we feel it belongs to Mr. Lloyd Lafever.

Q. Now, when you say a "possession line," could you explain to me what that is, sir?

A. It's an existing fence that runs north to south to the small drain [creek at the southern border of Plaintiffs' property], and it was put up. It's been there for many, many, many years, and everything to the west of it has – is still timber. Everything to the east of it has been timbered, been cleared.

Defendants introduced photographs showing barbed wire fencing in the middle of large trees. Mr. Helton went on to testify about the significance of the fence:

A. Usually a possession line, in my opinion, would be something that's been put up by a landowner to possess it. If it was – certainly the creek could be considered a possession line, but that's a natural monument, and a landowner doesn't have to do anything to that to create that possession line. If he timbers to it, he could say I possessed to that creek. But it's fairly obvious to me that for some reason whoever timbered the property stopped at the fence, and that's why I call that a possession line.

Mr. Helton went on to testify that, in addition to the fence, he had located "an existing iron pin that's there in the fence that would indicate a corner between three property owners, Mr. Lloyd Lafever, Mr. Farley [who bought the property from the Allisons] – and it's Gentry now – and Mr. Richard Lafever."

On cross-examination, Mr. Helton testified that there was "evidence of fence" all the way down to the creek at the northern boundary of the Nash property. There was "a large stretch that the fence is down, and it's obvious the white oak here and this Hickory here there's 327 feet between them." Mr. Helton stated that the land became steep as you neared Alum Creek and the branch. He acknowledged that the steep terrain and rocks could have been the reason that the owner of the disputed property had not cut the trees. Mr. Helton did not know how long the fence had been there. He agreed that the Nash deed described a line going all the way to the falls and did not mention meeting any lands owned by Lloyd Lafever or his predecessor. Mr. Helton had also seen the iron pin on the bank of Alum Creek. Mr. Helton admitted that he had not seen any evidence of efforts to rebuild the fences or cut trees in the disputed area for a long time. He agreed that the area around the falls appeared "pretty dangerous" and that one would not want stock to go into that area.

When questioned by the court, Mr. Helton did not have an explanation for the iron pin on the bank of Alum Creek and did not know its age.[5] On cross-examination, Mr. Helton agreed that the Allison deed line ended up at the pin at the edge of the creek. The court conducted the following line of questioning with Mr. Helton:

> THE COURT: Now, was there anything – in this area of land here that went down to the creek and was steep and had a falls over here, at the far left side of the survey map – in that area of land that gave you any physical proof of possession by one person or the other?
>
> MR. HELTON: No.
>
> THE COURT: So what you're basing the adverse possession on, that you say it's based on possession, is based on the wire that's through the trees that were shown in some photographs to you or that you observed on that land?
>
> MR. HELTON: Yes.
>
> THE COURT: And this pin that's up here shown at the northeast corner of the crosshatched [disputed] area?
>
> MR. HELTON: Yes. And in addition, this fence continues on. Of course, it shows up in the Nash description. This is a fence here as well. So the fence continues on south.

Bertha Nash, daughter of Mary Etta Hickey and Matt Hickey, previous owners of Plaintiffs' property, testified by deposition.[6] Ms. Nash was born on the property and lived there until her marriage in 1935. She testified that her father and Taylor Thomas, the property owner to the west "agreed on a line, the branch [creek] being the line." She testified that her father told her the property "went to the creek." Ms. Nash remembered that her father told the children not to go further than the bluff. She stated that the property "went to the falls."

Julia Boyd, former owner of Plaintiffs' property, testified that the area around the falls was dangerous and that her husband was concerned about livestock falling in. Her husband built many fences during the 40 years that they owned the property. She did not have first hand knowledge as to whether he built the fence at issue in the case. Ms. Boyd testified that the western line of their property "went all the way to the creek and the falls."

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[5] Mr. Helton identified one of the two pins (one near the creek, one in the fence) as being larger, but this court does not know to which he referred.

[6] By agreement of the parties, Ms. Nash's deposition was introduced into evidence because she was unavailable to testify at the hearing.

Ms. Boyd also testified that she and her husband paid taxes on their property during the years that they owned it. She stated that the tax map had been corrected to show that they did not own any property west of Alum Creek. She was not aware of any dispute over the property line before Richard Lafever bought her property.

Jerry Allison, son-in-law of Edith Nash, one of the children of Mary Etta and Matt Hickey listed on the deed, testified about Plaintiffs' property. He had hunted on the property. When asked about the western boundary line of the property,[7] Mr. Allison testified:

> Q. Mr. Allison, from your knowledge of the property as to the reputation of the boundary lines and particularly what your mother-in-law and aunt may have told you . . . what can you tell us about the location?
>
> A. Well, I heard them at various times say that T.G. Hickey, Thomas Gill Hickey, and whoever it was that owned that, years and years ago, they had a dispute over that line. It's been in dispute for at least 150 years. And then when T.G. died and Matt got it, which was T.G.'s son, they finally come to a verbal agreement over the line, that the hollow would be the line. But I don't think neither one of them ever made a deed for it.
>
> Q. Have you heard also Bertha [Edith's daughter and Mr. Allison's wife] or Edith say that also?
>
> A. Yes.
>
> Q. And the hollow being – that's where that Alum Creek is and down by the falls? Is that what you're talking about?
>
> A. Down to the top of the falls.

Mr. Allison agreed that the bluff down toward the falls was dangerous for livestock. He testified that he rented Plaintiffs' property from the Boyds for three or four years in the 1980's and grew crops. When asked if he knew about the steel pin by the creek, Mr. Allison stated: "I think they . . . put that in there when Johnny V. Allison had his place surveyed."

Larry Stamps lived on the Boyd farm, Plaintiffs' property, for about two years in the 1990's. He hunted, worked, fenced, and bushhogged on the Boyd property. Prior to that time, Mr. Stamps had been on the property frequently since he was ten years old. His grandfather, Samuel Nash, and Mr. Stamps fenced part of the property's boundary: from the southeast corner near Baxter Road west

[7] Counsel for Defendants initially objected on hearsay grounds to a question about the reputation regarding the boundaries, but no longer objected after counsel for Plaintiffs rephrased the question to clarify that he was asking Mr. Allison to testify about statements made by his mother-in-law.

to the top of the falls. According to Mr. Stamps, Mr. Boyd and Herb Nash, the property owner to the south, agreed on where to put the fence and had come down there when he and his grandfather were fencing. Mr. Stamps stated that the area around the bluff was steep and dangerous for animals. Mr. Stamps further stated that he and his grandfather had fenced the northern boundary of the property. They fenced all the way to the creek on the northwestern corner in the mid-1980's. It was his understanding that Mr. Boyd's property extended on the west all the way to the Alum Creek.

Mr. Stamps stated that the affected property owners were there when he and his grandfather did the fencing on the northern and southern sides of Mr. Boyd's property. He testified that the fences he and his grandfather built were boundary fences. He stated that there were a lot of cross fences and fences on Mr. Boyd's property. There was an old fence around the wood line at the back of the Boyd property. Mr. Boyd did not know how long that fence had been there:

> A. I don't know if me and my father tried to keep it up because we had goats in there. Coyotes would come through the fence. We had goats in there, and you'd have to have a pretty good fence to keep the goats in.

Richard Lafever stated that when he bought the property in 2005 from Ms. Boyd, she thought that it went to the falls. He confirmed that he had been paying taxes on the property since that time. He had the tax map corrected to show that he did not own the property across the creek, which decreased the acreage from 85 to 77.02 acres. Because he thought there was a dispute regarding the northern property line, Mr. Lafever had gone to look at that part of his property and had seen the pin in the bank of the creek. He did not run cattle on that part of his property. Richard Lafever testified that there was an old fence on the back part of his property, as well as an old fence going down toward the falls on the south side of his property. He stated that he had seen that the fence on his southern boundary went almost to the falls, but he could not see whether it actually went all the way to the falls after Mr. Nash cut some timber and it fell in that area.

Richard Lafever had not seen any evidence that Lloyd Lafever had done anything to claim possession of the disputed piece of property since Plaintiffs bought the land. He stated that the timber on the west side of the creek (on Defendants' property) was not as valuable as the timber on the disputed land.

Lloyd Lafever testified that, when he bought his property in 1963, he did not question the location of the boundary line between his property and the Boyd farm. Later, Lloyd Lafever understood that Johnny V. Allison, the property owner to the north, and the Boyds had a dispute about their property line. Mr. Allison told Lloyd Lafever that they had the property surveyed and that he thought he might have fenced in some of Lloyd Lafever's property. After Mr. Allison died, Lloyd Lafever approached Mr. Boyd about the location of the property line. Mr. Boyd told Lloyd Lafever that he was not sure of the location. The two men never pursued the matter further. Mr. Lloyd testified that, "I thought that line was mine because Johnny V. said it went up that way when he had it surveyed." When asked where he thought the line went, Lloyd Lafever testified:

A. Well, the way Johnny V. explained to me verbally up there – we didn't never get to go up there and look at it before he passed away – it left his property, went right up there off Mr. Boyd, and that's where an old fence was, right up that way there.

Q. Now then, I take what you're saying then is that you believe that your property ran up to that old fence on the Boyd property?

A. Yes, sir.

Lloyd Lafever identified the pictures with barbed wire in trees as being the fence to which he was referring.

Lloyd Lafever was then asked whether he had made use of the disputed property. He testified that he had been on the property and had rabbit and squirrel hunted there both before and after he had bought his property.[8] Lloyd Lafever bought cattle in the 1970's, and there was nothing to keep them from going across the creek and roaming on the disputed property. Five or six years before the time of the hearing, he erected a fence to keep the livestock from crossing the creek and going up on the hill.

Asked about the pin located near Alum Creek, Lloyd Lafever testified that "Axelguard sold that property there, and they surveyed."[9] Lloyd Lafever further stated that he talked to Clarence, presumably Clarence Burton, and told him that the pin was in the wrong place. This occurred four or five years prior to the hearing. According to Lloyd Lafever, Axelguard divided the property into three lots and sold one of them to Terry Farley. It appears that Lloyd Lafever is referring to the sale of property north of the property at issue in this case. As to the pin in the fence used by Mr. Helton in his survey, Lloyd Lafever testified that he did not know anything about how that pin came to be there.

Lloyd Lafever also testified that he thought he had been paying taxes on the disputed piece of property since he had paid taxes on his property.

On cross-examination, Lloyd Lafever acknowledged that it was probably not a good idea to allow livestock to wander into the disputed area because they could fall. Since the dispute with Richard Lafever arose, Lloyd Lafever had made red paint marks on the trees in the fence line he claimed to be the boundary line. Prior to that time, he had not marked the trees. He stated that he had not ever repaired the old fence, but had "tied some up where the old rotten wire broke down." Lloyd Lafever stated that there was nothing substantial enough to hold animals in or out there at

[8]Lloyd Lafever testified that he lived nearby even before he bought the tract of property at issue in this case.

[9]It is not clear to whom or to what location Lloyd Lafever's testimony refers here.

present. He stated that the timber on his side of Alum Creek was cut down at the same time he bought the property.

Randall Lafever, son of Lloyd and Mary Ellen Lafever, testified that he had lived on his parents' property and had hunted on the disputed area. He still deer hunted there. His knowledge concerning the boundary line came from his father.

ISSUES ON APPEAL

Defendants challenge the trial court's decision based upon the following arguments: (1) The trial court should have found adverse possession by Defendants because the property had been fenced for at least 50 years. (2) The trial court erred in relying upon inconclusive testimony regarding the payment of taxes. (3) The trial court committed plain evidentiary error by admitting a deed that was not in the chain of title as proof of the boundaries. (4) The trial court admitted inadmissible hearsay evidence regarding the boundaries. (5) The preponderance of the evidence fails to support the trial court's conclusions.

STANDARD OF REVIEW

The trial court's findings of fact are reviewed "*de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. . . ." Tenn. R. App. P. 13(d). Review of a question of law is also de novo, but "with no presumption of correctness afforded to the conclusions of the court below." *King v. Pope*, 91 S.W.3d 314, 318 (Tenn. 2002). A trial court's decision to admit or exclude evidence is generally reviewed under the abuse of discretion standard. *Mercer v. Vanderbilt Univ., Inc.*, 134 S.W.3d 121, 131 (Tenn. 2004). Thus, such a decision will not be overturned unless the court applied an incorrect legal standard or reached a decision contrary to logic or reasoning that caused injustice to the complaining party. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001).

ANALYSIS

Evidentiary issues

We find issue 3 regarding the admission of the Nash deed to be without merit. Defendants concede that they did not object to the admission of the Nash deed at trial. They argue that admission of the deed was plain error under Tenn. R. Evid. 103(d) because "[t]he admission of the Herbert Nash deed rises to prejudicial error because the trial court adopted Surveyor Bartlett's survey, which is based in large part on the Herbert Nash deed." We disagree.

Although the Nash deed was not in the chain of title for either Defendants' property or Plaintiffs' property, all of the deeds for these pieces of land are boundary deeds. Thus, the Nash deed's description of the northern boundary of the Nash property, which is also the southern boundary of Plaintiffs' property, was relevant in this case. The mere fact that a piece of evidence

tends to prove or disprove a certain position does not make such evidence unduly prejudicial. The trial court did not abuse its discretion in admitting such relevant evidence.

We likewise find no merit to Defendants' hearsay argument, issue 4. Defendants object to the testimony of five witnesses concerning the boundary line: surveyor Bartlett, Ms. Boyd, Ms. Nash, Mr. Allison, and Mr. Stamps. Defendants raised an objection to only one of these witnesses, Mr. Allison, at trial. Therefore, as to the other four witnesses, Defendants waived any objection to the evidence. Tenn. R. Evid. 103(a)(1). Although Defendants initially objected to a question to Mr. Allison concerning the "reputation" of the disputed property line, Defendants did not object when counsel for Plaintiffs reworded the question to clarify that he was inquiring about Mr. Allison's knowledge of statements made by his mother-in-law and aunt, who had owned the property. As pointed out by appellees' counsel at trial, such evidence has been deemed admissible. *Norman v. Hoyt*, 667 S.W.2d 88, 90 (Tenn. Ct. App. 1983) (declarations of former property owners during ownership are admissible to establish boundary lines and may be testified to by third parties).

Evidence regarding payment of taxes

Defendants argue that the trial court improperly applied the presumption of ownership established in Tenn. Code Ann. § 28-2-109, which states:

> Any person holding any real estate or land of any kind, or any legal or equitable interest therein, who has paid, or who and those through whom such person claims have paid, the state and county taxes on the same for more than twenty (20) years continuously prior to the date when any question arises in any of the courts of this state concerning the same, and who has had or who and those through whom such person claims have had, such person's deed, conveyance, grant or other assurance of title recorded in the register's office of the county in which the land lies, for such period of more than twenty (20) years, shall be presumed prima facie to be the legal owner of such land.

The trial court stated: "[I]t appears to me that this particular tract of land that's in dispute has been assessed for tax purposes to the plaintiff and his predecessors in title for more than 20 years, and it has not been assessed to Mr. Lloyd Lafever and his predecessors in title for more than that length of time." Defendants assert that application of the statute was erroneous in this case because there was no proof of property tax boundaries for the 20 years preceding the filing of this lawsuit.

We are inclined to agree with Defendants that the evidence preponderates against the trial court's finding regarding the payment of taxes on the disputed land. As the trial court noted, tax maps are admissible "to show who's paid taxes on what." Tax maps are useful "to confirm the payment of taxes but [are] not particularly helpful for the purpose of establishing a boundary line." *Cumulus Broad., Inc. v. Shim*, 226 S.W.3d 366, 381 (Tenn. 2007). In this case, there were tax records on parcel 53, Plaintiffs' property, showing that Ms. Boyd paid taxes on 85.5 acres in 2005 and that Richard Lafever paid taxes on 77 acres in 2008. The reduced acreage resulted from Richard

Lafever informing the tax assessor that he did not own property to the west of Alum Creek. The 2005 tax map admitted into evidence shows parcel 53 as including land to the west of Alum Creek. As to parcel 7, Defendants' property, the tax records show payment of taxes on 56 acres in 2008; the 2005 tax map shows that parcel 7 contains 60 acres.

The evidence does not include any tax maps for the 20 years prior to 2005. Ms. Boyd and Lloyd Lafever both testified that they paid taxes on their respective properties for over 20 years. The problem is that there are no tax records defining the parameters of the acreage upon which they paid taxes during those years. There was no testimony by tax officials concerning the tax boundaries on these properties over the relevant time period. Moreover, several witnesses testified about making corrections to the tax maps for this area over the years. Under the circumstances, we find insufficient evidence upon which to base a presumption of ownership with regard to either property owner. *See Brooks v. Johnson*, No. E2007-02840-COA-R3-CV, 2008 WL 2925327, *8 (Tenn. Ct. App. July 30, 2008).

As will be discussed below, however, even without the statutory presumption, the evidence does not preponderate against the trial court's determination as to the proper boundary line.

Boundary line determination

The trial court found that the Bartlett survey gave the correct description of the boundary line in dispute. Defendants assert that the evidence preponderates against this determination.

The following rule concerning the evidence to be considered in determining a boundary line is well-established:

> "In determining disputed boundaries resort is to be made first to the natural objects or landmarks, because of their permanent character. Next, the artificial monuments or marks. Then, the boundary lines of adjacent land owners. And then, the courses and distances."

Wood v. Starko, 197 S.W.3d 255, 258 (Tenn. Ct. App. 2006) (quoting *Thornburg v. Chase*, 606 S.W.2d 672, 675 (Tenn. Ct. App. 1980)). All of the deeds of the two pieces of property at issue here are boundary deeds and thus contain only references to the lines of adjacent land owners. Both surveyors made reference to natural landmarks appearing in the deeds of other tracts of land: Mr. Bartlett to a white oak from the Allison deed and the falls from the Nash deed, Mr. Helton to a sycamore tree in the description of Tract 2 in Defendants' deed. As to artificial monuments, each surveyor found an iron pin at a location consistent with his boundary line interpretation. Mr. Bartlett determined that the creek, a natural landmark, was the proper boundary line between the two properties. Mr. Helton determined that an old fence line, an artificial monument, divided the two properties.

It is also significant that Plaintiffs put on evidence of a previous oral agreement between predecessor landowners that the creek would be the boundary line between their properties. Such agreements are enforceable with proper proof. *Jack v. Dillehay*, 194 S.W.3d 441, 447 (Tenn. Ct. App. 2005). If parties enter into such an oral agreement, "they and their successors are estopped from challenging the line, even if it is later discovered that the parties were mistaken as to the location of the line at the time of the agreement." *Id.* at 448.

Defendants make a number of arguments to support their assertion that the evidence preponderates against the trial court's acceptance of the Bartlett survey. First, they emphasize that Mr. Bartlett did not complete the survey himself. Mr. Bartlett acknowledged that one of his employees, Mr. Maples, performed the field survey, but testified that he supervised Mr. Maples's work and had personally been on the property numerous times. The trial court was able to evaluate Mr. Bartlett's credibility at trial and, by accepting his survey, implicitly found Mr. Bartlett to be a credible witness. Defendants did not put forth any evidence to indicate that Mr. Bartlett's reliance on the work of an employee renders his survey suspect or deficient by industry standards. We do not find that the evidence preponderates against the trial court's decision to credit Mr. Bartlett's opinion. *See Mix v. Miller*, 27 S.W.3d 508, 514 (Tenn. Ct. App. 1999) (trier of fact to evaluate evidence and credibility in boundary dispute).

Defendants assert that Mr. Helton's survey should be credited over that of Mr. Bartlett because Mr. Bartlett failed to find an iron pin near the old fence line, which Mr. Helton determined to be the boundary line. Both surveyors noted the iron pin near the creek bed. Mr. Helton testified that he could not explain the significance or source of the iron pin near the creek bed. In effect, there are competing pins in this case. We cannot find, based only on Mr. Barlett's failure to note the iron pin in the old fence line, that the evidence preponderates against the trial court's determination of the proper line.

Defendants argue that Mr. Bartlett credited the statements of Ms. Boyd, who owned the property at the time of this survey, over monuments. We disagree with this characterization of the evidence. Both surveyors spoke with their clients, the property owners. Mr. Helton testified that his client, Lloyd Lafever, told him that he thought the line was at the old fence line. Mr. Bartlett spoke to Ms. Boyd about her knowledge of the boundary; he also spoke to Mr. Stamps, someone who had worked on the property, and obtained the deeds for the surrounding pieces of property. We find no evidence to suggest that Mr. Bartlett relied solely upon Ms. Boyd's statements and ignored monuments.

Defendants also assert that Mr. Bartlett "disregarded the old fence line claimed by the Defendant as the property line" and that "uncontested proof showed that for 50 years, Defendants maintained a fence far inside the boundary set by the trial court." The testimony of Mr. Bartlett cited by Defendants appears to refer to a fence running generally parallel to the northern boundary of

Plaintiffs' property, not the fence line at issue here.[10] The photographs introduced into evidence of the fence line at issue show barbed wire embedded in trees. Mr. Helton reasoned that this was a "possession line" because the property to the east of the fence line had not been timbered. He found "evidence of a fence" all the way down to the southern boundary of Plaintiffs' property, but acknowledged that there was a large stretch of 327 feet where the fencing was down. On cross-examination, Mr. Helton also agreed that the difference in timbering on the two sides of the fence could be due to the fact that the land to the west of the fence line down to the creek was steep and rocky. Larry Stamps testified that there were a number of fences and cross fences on Plaintiffs' property. Lloyd Lafever testified that he had not ever repaired the old fence, but had "tied some up where the old rotten wire broke down." He admitted that the fence was not substantial enough to keep animals in or out. He testified that the fence had been there since before 1958.

Given the evidence concerning the condition of the fence and the conflicting theories as to whether or not it was a boundary fence, we cannot find that the evidence preponderates against the trial court's conclusion that this was a fence of convenience and not a boundary fence.

Defendants argue that Mr. Bartlett improperly relied upon a natural monument, the falls, that was not in either property's chain of title. We cannot agree. All of the deeds in the chains of title for these two properties are boundary deeds. In such a situation, consideration of the deeds of surrounding property owners is necessary.

Finally, Defendants assert that the evidence preponderates against the trial court's boundary determination because, without the disputed area, Defendants would not have the total acreage called for in their deed. This argument fails because the evidence concerning the acreages of the parties' two adjoining pieces of property is equivocal. Defendants' deed states that the tract at issue, Tract 1, contains "19 acres more or less." Plaintiffs' deed calls for "70 acres more or less." As previously stated, Richard Lafever testified that the tax map concerning Plaintiffs' property was amended to show that Plaintiffs did not own any property to the west of Alum Creek; thus, in 2008, their taxes were computed on 77 acres instead of 85 acres as shown in the 2005 tax records. This change would presumably have increased the acreage taxed to Defendants. The 2008 tax records for Defendants' property introduced into evidence show the assessment on tax parcel number 7[11] to be based upon 56 acres.[12] As is not uncommon with old boundary deeds, the deeds at issue here contain only approximations of the acreages.

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[10] Mr. Bartlett testified that a fence represented by wavy lines on his survey "was just an old, old fence that wandered through the woods," and did not appear to be a boundary fence. While it is not entirely clear from the record, we believe this testimony refers to a fence immediately to the north of Plaintiffs' property.

[11] This parcel apparently encompasses both Tract 1 and Tract 2 from the deed.

[12] There was testimony by Lloyd Lafever and Mr. Helton that the tax acreage on this piece of property had been corrected after a survey by Mr. Helton, and the tax records note such a change.

The evidence does not preponderate against the trial court's conclusion that Mr. Bartlett's survey gave the correct description of the boundary line.

Adverse possession

Defendants assert that they "proved that the disputed area was fenced when [Lloyd Lafever] bought the land fifty (50) years ago and that he held it to the exclusion of others." Therefore, they argue, the trial court erred in failing to find adverse possession by Defendants.

Common law adverse possession "rests upon the proposition 'that, where one has remained in uninterrupted and continuous possession of land for 20 years, a grant or deed will be presumed.'" *Shim*, 226 S.W.3d at 376-77 (quoting *Ferguson v. Prince*, 190 S.W. 548, 522 (Tenn. 1916)). The required elements have been described as follows:

> [T]he possession must have been exclusive, actual, adverse, continuous, open, and notorious for the requisite period of time. Adverse possession is, of course, a question of fact. The burden of proof is on the individual claiming ownership by adverse possession and the quality of the evidence must be clear and convincing. The actual owner must either have knowledge of the adverse possession, or the possession must be so open and notorious to imply a presumption of that fact.

Shim, 226 S.W.3d at 377 (citations omitted).

In this case, the trial court found no evidence of adverse possession, and the evidence does not preponderate against that finding. Lloyd Lafever testified that, at one time, he had not prevented his animals from grazing on the disputed area, but he had later erected fencing to keep them from crossing the creek. Lloyd Lafever and Richard Lafever both testified that they had hunted on the disputed property. Lloyd Lafever had not maintained the fence line he claimed as a boundary but had tied a few wires that fell down. Larry Stamps testified that he and his grandfather had fenced the Boyds' southern boundary line down to the falls. Although there was some evidence that Defendants had used the disputed area from time to time, there was no evidence of continuous use and no evidence that the Boyds or Plaintiffs had been aware of this use or in any way acquiesced to it.

In arguing for adverse possession, Defendants rely chiefly upon the existence of the fence line. The mere existence of a fence is not, however, sufficient to establish adverse possession. *See, e.g., Lusk v. Englett*, No. M1999-00294-COA-R3-CV, 2000 WL 382082, *2 (Tenn. Ct. App. Apr. 17, 2000). The burden of proof is on the party seeking to establish ownership by adverse possession to rebut the presumption of ownership in favor of the true title holder. *Blankenship v. Blankenship*, 658 S.W.2d 125, 127 (Tenn. Ct. App. 1983). Lloyd Lafever admitted that the fence, in its current condition, would not keep animals in or out of the disputed area. Moreover, Defendants did not erect the fence; it was erected before they purchased their property. In rejecting an adverse possession argument, the court in *Lusk v. Englett* stated: "The fence in this case was erected by plaintiff's

predecessor, not defendants herein, and one of plaintiff's predecessor[s] testified that she helped erect the fence and it was not intended to be a boundary, but merely used to fence in crops." *Lusk*, 2000 WL 382082, at *2. We have already concluded that the evidence does not preponderate against the trial court's finding that the fence was not a boundary fence. The evidence likewise does not preponderate against the trial court's determination that there was no adverse possession.

CONCLUSION

We, therefore, affirm the decision of the trial court. Costs of appeal are assessed against Defendants/Appellants, for which execution may issue if necessary.

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ANDY D. BENNETT, JUDGE